

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
ANDREE O'NEILL,

Plaintiff(s),

REPORT AND RECOMMENDATION

-against-

CV 09-4778 (JFB) (ETB)

CHASE MANHATTAN BANK, N.A.,

Defendant(s).

-----X

TO THE HONORABLE JOSEPH F. BIANCO, United States District Judge:

The plaintiff's counsel, Edward V. Larsen, has failed to respond to the order to show cause, dated May 24, 2010. Therein, the court stated that further non-compliance with the orders of the court would expose this action to dismissal, without prejudice.

Mr. Larsen has failed to appear at any of the five (5) adjourned initial conferences. Moreover, although defendant's counsel, Stacey L. Blecher, has spoken to Mr. Larsen on numerous occasions, including to discuss the show cause order, dated May 24, 2010, Mr. Larsen has never communicated with the court or made any appearance on behalf of his client. Defendant's counsel further reports that her efforts to obtain an address of the plaintiff have been unsuccessful.

Defendant's counsel also states that Mr. Larsen told her that he suffered a stroke in 2009. She also reports that his voice on the telephone is slurred. Notwithstanding any physical disability that counsel may be under, he is able to communicate by phone and presumably is able to correspond with the court by mail or by ECF. He has never done so, however, and it is impossible for this action to proceed.

### RECOMMENDATION

For the foregoing reasons, it is with some reluctance that this court recommends that this action be dismissed, without prejudice, pursuant to Rule 41(b), Fed. R. Civ. P. and Rule 16(f), Fed. R. Civ. P., based on the failure of plaintiff's counsel to comply with the orders of the court and the failure to prosecute this action.

Defendant's counsel is directed to serve a copy of this Report and Recommendation on Mr. Larsen at the address stated on the docket sheet<sup>1</sup> and to file proof of service by ECF.

### OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Any written objections to this Report and Recommendation must be filed with the Clerk of the Court, with a copy to the undersigned, within fourteen (14) days of service of this Report. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 72(b). Failure to file objections within fourteen (14) days will preclude further appellate review. Thomas v. Arn, 474 U.S. 140, 145 (1985); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 299-300 (2d Cir. 1992).

Dated: Central Islip, New York  
June 23, 2010

/s/ E. Thomas Boyle  
E. THOMAS BOYLE  
United States Magistrate Judge

---

<sup>1</sup> The court is informed that plaintiff's counsel is not plugged in to ECF, and has never made application to the court to be excused from mandatory ECF filing applicable to all civil and criminal actions in this court.